

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)
	)
Amendment of Parts 12 and 90 of the	)
Commission's Rules Regarding	)
	)
Redundancy of Communications Systems:	)
Backup Power	)
	)
Private Land Mobile Radio Services: Selection	)
and assignment of frequencies, and transition of	)
the Upper 200 channels in the 800 MHz Band to	)
EA licensing	)

**ORDER**

**Adopted: November 1, 2011**

**Released: November 1, 2011**

By the Chief, Public Safety and Homeland Security Bureau, and Deputy Managing Director, Office of Managing Director:

1. In this Order, we make nonsubstantive, editorial revisions to Parts 12 and 90 of the Commission's rules. We make these revisions to delete certain rule provisions that are without current legal effect and obsolete. These nonsubstantive revisions are part of the Commission's ongoing examination and improvement of FCC processes and procedures. The revisions and the specific reasons for each one are set forth below.

2. Specifically, this Order deletes a rule setting forth backup power requirements for communications providers. This rule never took effect and ultimately was vacated in its entirety by the U.S. Court of Appeals for the District of Columbia (D.C. Circuit).<sup>1</sup> The rule, 47 C.F.R. § 12.2, is therefore without current legal effect and is deleted as obsolete.

3. This Order also deletes a rule providing that UHF television translators on Channels 70 to 83 must operate on a secondary basis to land mobile operations in the 800 MHz band and will not be protected from such operations. There are no UHF television translators operating on Channels 70 to 83, and the Commission has eliminated the TV allocation from these channels.<sup>2</sup> Accordingly, this rule provision, 47 C.F.R. § 90.621(d), is without current legal effect and is deleted as obsolete.

4. This Order also deletes a provision that allocates specified channels for Basic Exchange Telecommunication Radio Service (BETRS) but expressly cautions that a pending FCC proposal could

<sup>1</sup> See *CTIA v. FCC*, No. 07-1475 (D.C. Cir. July 31, 2009) (per curiam).

<sup>2</sup> See Inquiry Relative to the Future Use of the Frequency Band 806-960 MHz and Amendment of Part 2, 18, 21, 73, 89, 91 and 93 of the Rules Relative to Operations in the Land Mobile Service Between 806 and 960 MHz, *First Report and Order and Second Notice of Inquiry* in Docket No. 18262, 19 RR 2d 1663 (1970) (shifting translator stations 70-83 to channels 69 and below, subject to conditions on their continued operation pending completion of the shift, except in Puerto Rico).

remove this allocation from these channels. The Commission removed the allocation in 2005.<sup>3</sup> Accordingly, this provision, 47 C.F.R. § 90.621(h), is without current legal effect and is deleted as obsolete.

5. This Order also deletes rule provisions that provided a framework for the relocation of incumbent site-based licensees in the upper 200 channels of the 800 MHz Band by incoming geographically-based (EA) licensees. These provisions were a component of the 1995 reconfiguration of the 800 MHz band from site-based to geographic-based service that has since been completed. Accordingly, these provisions, 47 C.F.R. § 90.699(a)-(c), (e)-(f), are without current legal effect and are deleted as obsolete.<sup>4</sup>

6. The rule amendments adopted in this Order and set forth in the attached Appendix are ministerial, nonsubstantive, editorial revisions of the rules under 47 C.F.R. §§ 0.231(b) and 0.392(e). The revisions adopted in this Order merely delete obsolete rule provisions and we find good cause to conclude that notice and comment procedures are unnecessary and would not serve any useful purpose. *See* 5 U.S.C. § 553(b)(3)(B). Because the rules being deleted are obsolete and without current legal effect, we also find good cause to make these nonsubstantive, editorial revisions of the rules effective upon publication in the Federal Register. *See* 5 U.S.C. § 553(d)(3).

7. Because this Order is being adopted without notice and comment, the Regulatory Flexibility Act, 5 U.S.C. § 601 *et seq.*, does not apply.

8. The rules contained herein have been analyzed with respect to the Paperwork Reduction Act of 1995 and found to contain no new or modified form, information collection, and/or recordkeeping, labeling, disclosure, or record retention requirements, and will not increase or decrease burden hours imposed on the public.<sup>5</sup> In addition, therefore, this Order does not contain any new or modified “information collection burden for small business concerns with fewer than 25 employees,” pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198.<sup>6</sup> The Commission will send a copy of the Order in a report to Congress and the Government Accountability Office pursuant to the Congressional Review Act.<sup>7</sup>

9. For further information, contact Brian Hurley, FCC Public Safety and Homeland Security Bureau, Policy Division, Room 7-A765, 445 12th Street, S.W., Washington, D.C. 20554, (202) 418-2220, [Brian.Hurley@fcc.gov](mailto:Brian.Hurley@fcc.gov).

10. Accordingly, **IT IS ORDERED THAT**, effective upon publication in the Federal Register, Parts 12 and 90 of the Commission's rules **ARE AMENDED**, as set forth in the attached Appendix, pursuant to the authority contained in sections 4(i), 5(c) and 303(r) of the Communications Act, 47 U.S.C. §§ 154(i), 155(c) and 303(r), and sections 0.231(b) and 0.392(e) of the Commission's regulations, 47 C.F.R. §§ 0.231(b) and 0.392(e).

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<sup>3</sup> *See* Amendment of Part 22 of the Commission's Rules To Benefit the Consumers of Air-Ground Telecommunications Services, *Report and Order and Notice of Proposed Rulemaking*, 20 FCC Rcd 4403, 4563 ¶¶ 165-166 (2005).

<sup>4</sup> Because 47 C.F.R. § 90.699(d) is cross-referenced in an operative rule section, 47 C.F.R. § 90.677, this Order does not delete that subsection.

<sup>5</sup> *See* Public Law 104-13, 44 U.S.C. § 3501, *et seq.*

<sup>6</sup> *See* 44 U.S.C. § 3506(c)(4).

<sup>7</sup> *See* 5 U.S.C. § 801(a)(1)(A).

11. IT IS FURTHER ORDERED that the Secretary shall cause a copy of this Order to be published in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION

James Arden Barnett, Jr., Rear Admiral (Ret.)  
Chief, Public Safety and Homeland Security Bureau

David Robbins  
Deputy Managing Director

**APPENDIX****Revised Rules**

Part 12 of Title 47 of the Code of Federal Regulations is amended as follows:

**Part 12 — REDUNDANCY OF COMMUNICATIONS SYSTEMS**

1. The authority citation for Part 12 continues to read as follows:

Authority: Sections 1, 4(i), 4(j), 4(o), 5(c), 218, 219, 301, 303(g), 303(j), 303(r), 332, 403, 621(b)(3), and 621(d) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 154(o), 155(c), 218, 219, 301, 303(g), 303(j), 303(r), 332, 403, 621(b)(3), and 621(d), unless otherwise noted.

2. **§ 12.2 [Removed]**

Remove §12.2.

Part 90 of Title 47 of the Code of Federal Regulations is amended as follows:

**Part 90 — PRIVATE LAND MOBILE RADIO SERVICES**

1. The authority citation for Part 90 continues to read as follows:

AUTHORITY: Sections 4(i), 11, 303(g), 303(r), and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), and 332(c)(7).

2. **§ 90.621 [Amended]**

In § 90.621, remove and reserve paragraphs (d) and (h).

3. **§ 90.699 [Amended]**

In § 90.699, remove and reserve paragraphs (a)-(c) and (e)-(f).